rates, open to whoever might apply for accommodation, and where intoxicating liquor was sold at retail; while "boarding house" was a place of private entertainment, where special contracts were usually made.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Boarding House; Ordinary.]

2. Innkeepers (§ 13*)—"Boarding House" and "House of Private Entertainment" in Lien Statute Are Synonymous.—Within Code 1919, § 6444, giving the keeper of an inn, boarding house, or house of private entertainment a lien on the property of guests therein, which as originally enacted and as last amended before codification had no comma between "boarding house" and "house of private entertainment," those terms were intended to be synonymous.

3. Innkeepers (§ 13*)—Boarding School Is Not "Boarding House" within Lien Statute.—A corporation authorized to conduct a boarding school is not the keeper of a boarding house within Code 1919, § 6444, giving the keeper of a boarding house a lien on the property of guests therein, so that such school cannot claim a lien upon the trunks of students therein.

Error to Corporation Court of Buena Vista.

Action in detinue by A. L. Talbott against the Southern Seminary, Inc. Judgment for defendant, and plaintiff brings error. Reversed.

H. S. Rucker, of Buena Vista, for plaintiff in error.

Jno. Dabney Smith, of Buena Vista, for defendant in error.

WITHROW'S EX'X et al. *v.* PORTER.

Nov. 17, 1921.

[109 S. E. 441.]

1. Ejectment (§ 119 (2)*)—Equitable Defense, Good in Ejectment, May Be Basis for Injunction against Enforcement.—Even if a contract of purchase is an equitable defense to ejectment, permitted under Code 1919, §§ 5471, 5472, that fact does not preclude a bill to restrain the enforcement of the judgment in ejectment under the express provision of section 5473.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 874, et seq.]

2. Ejectment (§ 119 (2)*)—Demurrer Held Not to Attack Bill for Want of Equity.—On a bill to restrain enforcement of a judgment in ejectment, a demurrer on the ground that the subject matter in controversy had been settled by a judgment at law is not sufficient to put complainant on notice that defendants intended to claim that the

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

bill did not state equities which ought to prevail over defendant's regular title under the judgment in ejectment.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 874, et seq.]

3. Ejectment (§ 119 (2)*)—Bill Held to State Grounds for Restraining Enforcement of Ejectment Judgment.—A bill, alleging that complainant had a contract for the purchase of the property involved in ejectment, and that a receipt defeating his rights under the contract was obtained from him by fraud, states sufficient equity to entitle complainant to an injunction restraining enforcement of the judgment in ejectment.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 874, et seq.]

4. Equity (§ 263*)—Demurrer to Answer Held Sufficient as Motion to Strike.—In a suit in equity a so-called demurrer to the answer, which stated reasons why the answer was insufficient and prayed that it be dismissed and stricken from the record, was a substantial compliance with Code 1919, § 6123, abolishing exception to answers for insufficiency and substituting therefor a motion to strike out.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 587.]

5. Appeal and Error (§ 1040 (2)*)—Filing Demurrer, Instead of Motion to Strike Answer, Held Harmless.—Though it is not good practice to demur to the answer to a bill in equity, and the language of a so-called demurrer to the answer was not in compliance with Code 1919, § 6123, the action of the court in rejecting the answer would be harmless if no opposition was made to the form of the procedure and the answer was insufficient.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 587.]

6. Equity (§ 263*)—Answer Filed by Leave Cannot Be Stricken as Too Late.—An answer to a bill in equity, filed after the expiration of time permitted by Code 1919, § 6122, cannot be stricken because filed too late, where it was filed with express leave of the court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 389.]

7. Vendor and Purchaser (§ 82*)—Agreement, Changing Contract from Sale to Rental, Held Valid.—Where a contract for the sale of house and lot on installments expressly provided that if the purchaser defaulted in paying the installments the payments already made should be treated as payment of rent at a vested sum per month, a subsequent agreement, indorsed on the back of the contract and acknowledged by the purchaser, that the payments be accepted as rent, and that the vendor be released from his obligation on the contract, is a valid transformation of the contract from one of purchase to one of rent, which is supported by the original consideration for the contract, and bars the purchaser's right to performance of the con-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tract on completion of the payments, unless his subsequent agreement was obtained by fraud.

Error to Circuit Court, Rockbridge County.

Suit in equity by Ben Porter against J. M. Withrow and others subsequently revived against J. M. Withrow's executrix. Decree for complainant, and defendants bring error. Reversed.

Wallace Ruff, of Lexington, and *Curry & Curry,* of Staunton, for plaintiffs in error.

Hugh A. White, of Staunton, for defendant in error.

COMMONWEALTH *v.* THOMPSON.

Nov. 17, 1921.

[109 S. E. 447.]

1. Criminal Law (§ 134 (1)*)—Apprehension that Prisoner Cannot Have Fair Trial Is Insufficient to Require Change of Venue.—A mere apprehension by accused that he cannot have a fair trial in the county in which the offense was committed because of prejudice is not sufficient to support a motion for change of venue, but he must establish by independent and disinterested testimony facts which make it probable that his fears are well founded.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 781.]

2. Criminal Law (§ 134 (1)*)—Public Attitude Requiring Change of Venue Must Be That at Time of Trial.—Testimony in support of a motion for change of venue because of prejudice which would prevent a fair trial must establish the condition in the public mind at the time of trial.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 781.]

3. Criminal Law (§ 121*)—Court Has Wide Discretion Over Motion for Change of Venue for Prejudice.—In ruling on a motion under Code 1919, § 4914, for change of venue because of lecal prejudice, which would prevent a fair trial, the trial court has a wide discretion.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 787.]

4. Criminal Law (§ 134 (1)*)—Proof Held Not to Show Abuse of Discretion in Denying Change of Venue.—Proof that, after accused was arrested at the time of the homicide, the officers were prevented by mobs from removing him to another place, and that he was struck by members of the mob, and subsequently made his escape, but that at the time there was no attempt to lynch him, and that more than two months since had elapsed, during which time no demonstration had been made against him, though part of the time he was in jail

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.